

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Revocation of the Building Contractor License of John L. Trebesch	<b>FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION</b>
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The above-entitled matter came on for hearing before Kathleen D. Sheehy, Administrative Law Judge, on December 5, 2005, at the Office of Administrative Hearings in Minneapolis. The hearing record closed that day.

Wayne L. Sather, Esq., Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, Minnesota 55146-2220, appeared for the Department of Revenue (Department).

John L. Trebesch, 15195 Martin Drive, Eden Prairie, Minnesota 55344-2036, appeared on his own behalf without counsel.

### NOTICE

This report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner of Revenue shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Commissioner of Revenue. Parties should contact Wayne L. Sather, Attorney, Legal Services Section, Mail Station 2220, St. Paul, MN 55146-2220 or 651/296-8228 for specifics of how to file exceptions or present argument. The record closes upon the filing of exceptions to the report, or upon the expiration of the deadline for doing so.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

### STATEMENT OF ISSUE

Should Mr. Trebesch's building contractor license be revoked for failure to pay withholding taxes due for a company in which he was a partner and for failure to file individual income tax returns for the years 2002 through 2004?

The Administrative Law Judge concludes that Mr. Trebesch's license should be revoked.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. John Trebesch holds building contractor license No. 20264306 issued by the Minnesota Department of Commerce. That licensing authority is now held by the Department of Labor and Industry.<sup>1</sup> Trebesch is part owner of a general contracting company called Aanabesch & Associates, LLC (Aanabesch); and he is or was at all relevant times a part owner of a framing company called Munger & Sons, LLC (Munger & Sons).<sup>2</sup>

2. Munger & Sons filed a certificate of organization with the Minnesota Secretary of State on April 12, 2000.<sup>3</sup> The Articles of Organization for Munger & Sons filed at that time identified John Trebesch as the contact person for the company, and the company's registered office address was 11030 Lexington Drive, Eden Prairie, MN 55344, which was then Trebesch's home address.<sup>4</sup>

3. On March 2, 2001, Trebesch filed with the Secretary of State an Amendment of Articles of Organization for Munger & Sons. The Amendment to the Articles of Organization changes the company's registered office address to 6010 Woodhill Lane, Rockford, Minnesota 55373.<sup>5</sup> This was Trebesch's new home address.<sup>6</sup> In addition, on the 2001 U.S. partnership return filed for Munger & Sons, Trebesch identified himself as the company's Tax Matters Partner.<sup>7</sup>

4. On March 7, 2002, Trebesch signed his Minnesota individual income tax return for 2000. On Schedule E of his Form 1040, Trebesch identified himself as a part-owner of Munger & Sons and itemized a nonpassive loss of \$29,550 from that investment.<sup>8</sup>

5. On April 15, 2002, Trebesch signed his individual income tax return for 2001. On Schedule E of his Form 1040, Trebesch identified himself as a part-owner of Munger & Sons and itemized a nonpassive loss of \$20,961 from that investment.

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<sup>1</sup> On May 16, 2005, the Governor signed Executive Order 193, transferring the responsibility for regulation of residential building contractors to the Department of Labor and Industry.

<sup>2</sup> Testimony of John Trebesch.

<sup>3</sup> Ex. 20.

<sup>4</sup> Ex. 20.

<sup>5</sup> Ex. 20.

<sup>6</sup> Exs. 11-12.

<sup>7</sup> Testimony of John Trebesch.

<sup>8</sup> Ex. 11.

Trebesch also identified himself as part-owner of Aanabesch and itemized nonpassive income from that investment.<sup>9</sup>

6. On October 8, 2003, the Department sent Munger & Sons a notice that the company's tax withholding for 2000, 2001, and 2002 was under review. The notice requested that Munger & Sons provide copies of the W-2 forms issued to employees for 2000-02. The notice was mailed to 6010 Woodhill Lane, Rockford, Minnesota.<sup>10</sup> File notes from that date indicate that the Department had information from the Department of Employment and Economic Development (DEED) that Munger & Sons had become active in the second quarter of 2000 and had reported wages paid for that year, but had not filed a withholding tax return. In addition, the Department was aware that Munger & Sons had issued W-2s in 2001, because employees had filed them with their individual tax returns.<sup>11</sup>

7. As part of the investigation into the status of Munger & Son's tax withholding liability, Department staff found a telephone number listing John and Suzanne Trebesch as owners of Munger & Sons. On October 29, 2003, the staff person left a voicemail message for Trebesch inquiring about the status of Munger & Sons. The Department received no response to the voicemail.<sup>12</sup>

8. On November 26, 2003, the Department sent Munger & Sons a proposed assessment of tax for failing to make required withholding tax payments in 2000 and 2001. The amount of the proposed assessment was derived from wage information received from DEED.<sup>13</sup> The proposed assessment contained a notice provision that allowed thirty days for a response. The notice was mailed to 6010 Woodhill Lane, Rockford, Minnesota.<sup>14</sup> The Department received no response to the proposed assessment.<sup>15</sup>

9. On December 31, 2003, the Department sent Munger & Sons an assessment in the amount of \$25,746.61 for tax, penalties, and interest for failing to make required withholding tax payments in 2000 and 2001. The assessment contained a notice provision that allowed sixty days for a response. The notice was mailed to 6010 Woodhill Lane, Rockford, Minnesota.<sup>16</sup>

10. The Department received a telephone call from Trebesch regarding the assessment on January 9, 2004. Notes of that conversation indicate that Trebesch described himself as a partner in the business with Shawn Anderson. Trebesch asserted that there were no wages paid by Munger & Sons in 2001. This assertion was contradicted by electronic W-2 forms filed by Munger & Sons' employees in that year.

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<sup>9</sup> Ex. 12.

<sup>10</sup> Ex. 13.

<sup>11</sup> Ex. 16.

<sup>12</sup> Ex. 16.

<sup>13</sup> Testimony of Stacy Fischer, Tape 1.

<sup>14</sup> Ex. 14.

<sup>15</sup> Testimony of Fischer, Tape 1.

<sup>16</sup> Ex. 14.

Later in the conversation, Trebesch indicated he had left the partnership and that Shawn Anderson was the responsible person. The staff person advised Trebesch to send the Department a letter with any available information concerning Munger & Sons. During the phone call Trebesch agreed to do so, but the Department received no letter and no supporting documentation from him.<sup>17</sup>

11. On September 30, 2004, the Department issued an Order Assessing Personal Liability (2004 Assessment Order) to Trebesch, in the amount of \$24,416.72 for unpaid withholding tax. The assessment was made under Minn. Stat. § 270C.56 for amounts calculated as owing from Munger & Sons. The 2004 Assessment Order was mailed to 6010 Woodhill Lane, Rockford, Minnesota, and contained notification of the appeal process.<sup>18</sup> Trebesch did not appeal the 2004 Assessment Order.

12. On November 3, 2004, Ann Hitchcock, Revenue Specialist with the Department, visited the Woodhill Lane address in Rockford. The home had a “for sale” sign in the yard, and no one was there. The realty company identified on the sign was Aanabesch Homes. Little furniture was visible through the front window. Hitchcock left her card taped to the door with a message for Trebesch to call her. She then went to 5710 W. 36<sup>th</sup> Street, St. Louis Park, Minnesota (the offices for Aanabesch Homes). She spoke to the receptionist and was told that Trebesch had been there that morning and that he would return later that day. Hitchcock gave the receptionist her card and asked her to have Trebesch call her. Hitchcock also went to 5103 Lincoln Drive in Edina and spoke to Suzanne Trebesch, who told Hitchcock that Trebesch was still living at the Woodhill Lane address in Rockford.<sup>19</sup>

13. On January 4, 2005, the Department mailed a Demand for Payment and Intent to Levy Wages (2005 Levy Demand) to Trebesch at 5710 W. 36<sup>th</sup> Street, St. Louis Park, Minnesota. The total levy amount of \$26,652.38 was itemized as \$17,276.74 for unpaid December 2001 withholding tax, \$5,183.05 for penalties, and \$4,192.59 for interest.<sup>20</sup> The Department did not receive a return of the 2005 Levy Demand as undeliverable. The Department also filed a state tax lien in Hennepin County on Trebesch’s residence in Rockford on February 11, 2005.<sup>21</sup>

14. Based on information obtained by the Department from DEED, the Department reasonably calculated the unpaid withholding tax that was owed by Munger for 2001 and 2002. That unpaid tax was appropriately assessed against Trebesch personally, due to his continued ownership interest in Munger & Sons during the relevant period. The time to appeal that assessment has expired, and Trebesch did not appeal it to Tax Court. As of December 5, 2005, the amount Trebesch owes for the

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<sup>17</sup> Testimony of Stacy Fischer, Tape 1; Ex. 16.

<sup>18</sup> Ex. 1.

<sup>19</sup> Testimony of Hitchcock, Tape 2.

<sup>20</sup> Ex. 2.

<sup>21</sup> Ex. 3. The lien amount was \$26,775.92, including additional interest and \$30 for lien fees.

withholding tax liability of Munger & Sons in 2001 and 2002 is \$27,539.40 for tax, penalties, and interest.<sup>22</sup>

15. On March 14, 2005, the Department mailed a Demand to File Individual Income Tax Returns (First Filing Demand) to Trebesch's office address at 15195 Martin Drive, Eden Prairie, Minnesota. The First Filing Demand identified tax returns for 2002 and 2003 as not having been filed. The First Filing Demand set a deadline of April 11, 2005 for filing those returns. A contact person was identified for updating penalty and interest charges to be included with the filings.<sup>23</sup>

16. The Department issued a Notice of Intent to Revoke License (Revocation Notice) on May 3, 2005. The Revocation Notice informed Trebesch that the Department would notify the Minnesota Department of Commerce to revoke his building contractor license (held as John Trebesch d/b/a Aanabesch Assoc. LLC.) unless Trebesch paid the amount due for 2001 and filed the missing returns for 2002 through 2004 by June 3, 2005. The Revocation Notice was mailed to Trebesch at his office address at 15195 Martin Drive, Eden Prairie, Minnesota.<sup>24</sup>

17. On May 4, 2005, the Department mailed a Demand to File Individual Income Tax Returns (Second Filing Demand) to Trebesch at 15195 Martin Drive, Eden Prairie, Minnesota. The Second Filing Demand identified the tax return for 2004 as not yet filed. The Second Filing Demand set a deadline of June 3, 2005 for filing that return.<sup>25</sup>

18. Trebesch responded with a letter dated May 23, 2005, requesting a hearing regarding the missing income tax returns for 2002 through 2004.<sup>26</sup> The Department issued a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Case (Notice of Hearing) on August 4, 2005.

19. A prehearing conference was held in this matter on September 19, 2005. Prior to the prehearing conference, Hitchcock called Trebesch to clarify what information was needed in order to avoid revocation of Trebesch's license. Hitchcock and Aho both informed Trebesch that his personal tax returns for 2002, 2003 and 2004 had not been received by the Department.<sup>27</sup> During the prehearing conference Trebesch insisted that he was not associated with Munger & Sons after 2000 and that he had electronically filed his individual income tax returns. The parties agreed to attempt to resolve the matter, and another prehearing conference was scheduled for October 26, 2005. The conference was held as scheduled. There was further discussion between the parties as to the additional documentation Mr. Trebesch needed to provide, and the hearing was scheduled to take place on December 5, 2005.

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<sup>22</sup> Ex. 17; Testimony of Aho. .

<sup>23</sup> Ex. 4.

<sup>24</sup> Ex. 5. The amount due was identified at \$27,007.75.

<sup>25</sup> Ex. 6.

<sup>26</sup> Ex. 7; Testimony of Cindy Aho. Tape 1.

<sup>27</sup> Testimony of Ann Hitchcock, Testimony of Aho. Tape 1.

20. Before the hearing, Trebesch provided to the Department and the Administrative Law Judge a CD-ROM that contained images of various tax forms. The relevant forms pertaining to Munger & Sons were printed out, offered, and received in evidence as Ex. 20. The remaining documents are tax forms for various entities with which Trebesch has been associated, including Aanabesch, for various years. None of the imaged documents are of personal income tax forms showing that Trebesch filed his individual income taxes for 2002, 2003, or 2004. The documents were not received into evidence but are included in the record as an offer of proof.

21. There is no credible evidence that Trebesch filed Minnesota income tax returns for the years 2002, 2003 or 2004.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Department and the Administrative Law Judge have authority to consider the issues set out in the Notice and Order for Hearing and to take the action proposed under Minn. Stat. §§ 14.50 and 270C.72, subd. 1.

2. Minn. Stat. § 270C.72, subd. 3, provides that if an applicant [or licensee] requests a contested case hearing, the hearing must be held within 45 days of the date the Commissioner refers the case to the Office of Administrative Hearings. In addition, the applicant must receive 20 days' notice in writing of the time and place of the hearing and the allegations.

3. The hearing in this case did not take place within 45 days of the date the Commissioner referred the case to the Office of Administrative Hearings. The delay in the hearing was by agreement of the parties and does not constitute either a substantive or procedural error.

4. The Department gave proper notice of the hearing in this matter to the Respondent and has complied in all other respects with the substantive and procedural requirements of law and rule.

5. Minn. Stat. § 270C.72, subd. 1, states in pertinent part:

The state or a political subdivision of a state may not issue, transfer, or renew, and must revoke a license for the conduct of a profession, occupation, trade or business if the commissioner notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest. The commissioner may not notify the licensing authority unless the applicant taxpayer owes \$500 or more in delinquent taxes or has not filed returns. If the applicant taxpayer does not owe delinquent taxes but has not filed

returns, the commissioner may not notify the licensing authority unless the taxpayer has been given 90 days' written notice to file the returns or show that the returns are not required to be filed. ...

6. The Respondent has received the required 90 days' written notice to file the missing returns or to show that he is not required to file the returns.

7. The Respondent owed \$27,539.40 as of December 5, 2005 in delinquent taxes, penalties, interest, and lien filing fees and Respondent has failed to file income tax returns for the years 2002, 2003, and 2004. The Respondent has not demonstrated that he is not liable for the delinquent taxes, penalties and interest and has failed to show that he is not required to file the missing returns.

8. The Department has met the statutory requirements for notifying the Commissioner of Labor and Industry that Respondent's residential contractor license should be revoked.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner of Revenue issue a Notice of License Revocation to the Minnesota Department of Labor and Industry indicating that the Department of Labor and Industry must revoke the Respondent's residential contractor license.

Dated this 4th day of January, 2006.

s/Kathleen D. Sheehy  
KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Tape Recorded, two tapes.

### **NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve the final decision upon each party and the Administrative Law Judge by first-class mail.

## MEMORANDUM

The Respondent contends that he was no longer affiliated with Munger & Sons during 2001 so is not responsible for the withholding tax assessment for that year. There is some evidence that Trebesch intended to sell the controlling interest in the partnership to Shawn Anderson as of December 31, 2000; however, there is voluminous contradictory evidence that Trebesch in fact continued to be associated with Munger & Sons during 2001. The Amendment of Articles of Organization for Munger & Sons, which Trebesch filed with the Secretary of State on March 2, 2001, changes the registered office address for the company to Trebesch's residence address at 6010 Woodhill Lane, Rockford, Minnesota 55373.<sup>28</sup> Trebesch's testimony that although he permitted Anderson to operate Munger & Sons from Trebesch's home during 2001, but had no involvement in the company during that time, is not credible. On the 2001 partnership return filed for Munger & Sons, Trebesch identified himself as the Tax Matters Partner.<sup>29</sup> Further, Trebesch's personal income tax returns from 2000 and 2001, which were signed and filed with the Department, acknowledge a partial ownership interest in Munger & Sons, with tax consequences for Trebesch in those years. The record fully supports the conclusion that Trebesch remained a partner in Munger & Sons during the time when the withholding tax obligation accrued.

Trebesch also argued that he is not responsible for the assessed withholding tax for Munger & Sons because the 2005 Levy Demand mailed in January 2005 was sent to the wrong address (in St. Louis Park) and that he did not receive it. The collection agent had personally confirmed that this was an address at which Trebesch could be reached. More importantly, the mailing of the Levy Demand is not critical to this proceeding. All of the Department's requests for information, the Proposed Order of Assessment, and the Order of Assessment were mailed to the correct address for both Trebesch and Munger & Sons. Trebesch was not prejudiced in any way by use of the St. Louis Park address for the 2005 Levy Demand.<sup>30</sup> The Order of Assessment holding Trebesch personally liable for the withholding tax liability was properly issued and was not appealed. Trebesch is responsible for that accrued tax and the interest, penalties and lien fees that accompany nonpayment of the tax.

Trebesch offered an unsigned Minnesota individual income tax form for 2002, which he maintained was electronically filed, along with tax returns for a variety of other businesses with which he is or was associated. These documents are included in the record as an offer of proof; however, there is no credible evidence that the 2002 tax return was ever filed with the Department, and there is no credible evidence that Trebesch ever prepared or filed individual income tax returns for 2003 or 2004.

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<sup>28</sup> Ex. 20.

<sup>29</sup> Ex. 20; Testimony of John Trebesch.

<sup>30</sup> Trebesch's failure to respond or to appeal the assessment may be the result of his acknowledged policy of not opening mail addressed to an entity for which he does not believe he is responsible. Testimony of John Trebesch.



Finally, at the outset of the hearing Trebesch requested a continuance on the ground that he did not believe the Department had adequately complied with the Administrative Law Judge's prehearing order to provide a brief summary of the anticipated testimony for each witness.<sup>31</sup> There were two prehearing conferences in this matter, and the Department provided its witness list and exhibits to Trebesch well in advance of the hearing.<sup>32</sup> Trebesch himself provided no summary to the Department of his anticipated testimony. The Administrative Law Judge denied Trebesch's request on the basis that he had not established good cause for a continuance of the hearing.<sup>33</sup>

K.D.S.

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<sup>31</sup> First Prehearing Order, October 27, 2005.

<sup>32</sup> October 18, 2005; November 10, 2005.

<sup>33</sup> See Minn. R. 1400.7500 (requests for a continuance shall be made in writing and served upon all parties of record; requests filed within five business days of the hearing shall be denied unless the reason for the request could not have been earlier ascertained).